

Application No. 10/055,440

Title: ROTATIONALLY MOLDED SEPTIC TANK WITH RISER

Amendment Responsive to Office Action dated: October 21, 2003

**Remarks**

Claims 1-4 remain in this application, claims 5-20 having been withdrawn. Claim 1 is the only independent claim currently presented, and has been amended herewith.

The present invention as set forth in pending claims 1-4 is concerned with the problems presented by having septic tanks buried below grade. There is a need for a combination vessel, cover and riser which comprise a septic tank assembly which are designed to meet and overcome these problems. The present invention of claims 1-4 addresses these issues by providing a riser which may be trimmed to different heights whereby a single riser of a standard length may be trimmed to position the cover received thereon above the grade without the necessity of having a number of risers of different length at the installation site.

None of the references of record provide a solution to the problem addressed by the present invention. The references cited in support of the anticipation and obviousness rejections in the October 21, 2003 Office Action include structure which enables the riser to be coupled in its initial configuration to the below-grade vessel and receive the cover thereon, or to be trimmed in length and still provide a sealing engagement with the vessel.

The principal reference cited in the Office Action is the AKI catalog provided by the applicant as part of an information disclosure statement. The examiner is correct in stating that this catalog shows a pump tank on page 12 which includes a vessel, cover and riser, and various risers are in fact disclosed on page 7, all of synthetic resin material. Indeed, the risers depicted on page

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7 disclose a number of axially spaced, circumscribing ribs spaced outwardly of the riser wall, the ribs including substantially horizontal flanges.

However, applicants invention as set forth in claim 1 is not limited to the structure listed above and in the paragraph at page 2 of the Office Action supporting the rejection of claim 1 under 35 U.S.C. §102(b), for claim 1 further calls for:

said flanges each being complementally sized and configured relative to said rim whereby said a circumscribing cut through one of said ribs or said riser wall adjacent said flange will reduce the longitudinal length of said riser and whereby the remaining, normally bottommost flange of the riser may be coupled to the rim in sealing engagement.

Nowhere in the disclosure of the AKI catalog or any of the other references is there any teaching of this limitation. Not only is the AKI catalog and the other references of record silent as to the ability to trim the risers in length by a circumscribing cut and still fit the riser to the rim of the vessel, but the structure shown by the risers of the AKI catalog and the vessels shown therein are not complementally configured to permit such adjustment. First, it may be seen that the risers depicted on page 7 of the AKI catalog which are sized to permit gaining access to the chamber of the vessel have an outwardly projecting flange of a greater dimension than the ribs. Thus, the risers are not constructed to be capable of being trimmed in length, because the ribs (and their flanges) of the AKI catalog would not then fit in sealing engagement with the vessel rim. With respect to the riser and pump tank combination at page 12, it may be seen that the riser does not sealingly engage with the rim at all, because the riser rests on the castiron reinforcement collar and there is a clearance between the rim of the tank and the inner wall of the riser. Certainly there is no teaching or suggestion to

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provide a riser which may be cut circumferentially and still seal to the rim of the vessel in the AKI catalog.

It should be appreciated by the examiner as disclosed in the present invention, the vessel, cover and riser must be complementally configured to achieve the desired result, such that the cover can be coupled either directly to the vessel in some applications or to the riser in others, and that the riser be configured so that it seals with the rim in either an initial configuration or in a trimmed condition where the length is reduced by a circumscribing cut. While the AKI reference shows the cover mounted on both the vessel directly, as at page 9, or mounted on a riser as at page 7, there is certainly nothing to suggest that the riser may be trimmed in length and still seal against the rim of the vessel in the AKI catalog while still accepting the cover. Put another way, the AKI reference does not teach the use of a rim which is configured to both accept a cover or a riser in an initial condition, or a trimmed riser and still seal thereagainst.

Applicant has amended claim 1 to further demonstrate the difference between the present invention and the prior art. In this regard, claim 1 has been amended to recite an inwardly tapering receiving surface on the vessel rim and a complementally configured inwardly tapering surface on the connector portion of the riser for mounting on the receiving surface. This allows the riser and rim of the vessel to interconnect in an initial, untrimmed condition, and claims 2-4 provide additional limitations directed to that feature. But as emphasized again in claim 3, the vessel rim and riser must be capable of sealing engagement, both in the initial configuration and in the trimmed condition, and the complemental tapered surfaces of the vessel rim and the connector portion of the riser are not

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shown or suggested in the AKI or other references where it is further possible to cut the riser to a desired length and still provide a sealing engagement between the riser and the vessel rim.

Thus, applicant submits that claim 1 is neither anticipated, nor is it obvious to those skilled in the art, and should be allowed over the art of record.

In the obviousness rejection of claims 2, 3, and 4, the examiner has considered are not relevant to the applicant's field of endeavor or the problem with which he is confronted. While the AKI catalog is concerned with septic tanks, risers and covers, the Wittenberg 2,218,188 patent is concerned with a pressure cooker (see title -- "Pressure Cooker"), and the Seizert et al. 5,207,463 patent is concerned with an automobile fuel tank (see col. 1, lines 17-19), and are nonanalogous art. As such, these two references should not have been considered as a part of the scope of the relevant prior art for an obviousness determination under 35 U.S.C. §103.

The test for determining whether a reference is analogous or non-analogous art is clearly stated in *In re Deminiski*, 230 USPQ 313, 315 (Fed. Cir. 1986) as follows:

The determination that a reference is from a nonanalogous art is therefore twofold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the problem with which the inventor was involved.

Applying the foregoing test, it is clear that these references should not have been considered or applied as prior art to the present invention. Pressure cookers and automotive fuel tanks are clearly outside the field with which the applicant is concerned, which is underground storage and

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septic tanks. There is absolutely no connection between pressure cookers and automotive fuel tanks and septic tanks. If the question is asked, does one of ordinary skill in the art normally consider the pressure cookers and automotive fuel tanks as a part of the field of endeavor, the answer is a resounding "no". Perhaps even more strongly, these references are not pertinent to the problem with which the inventor was involved. Here, the inventor was concerned with the problem of providing a riser for buried vessels which would provide adjustment and avoid the necessity of having multiple risers on site depending on the final grade. Pressure cookers and automotive fuel tanks have absolutely nothing to do with this problem.

The situation in this regard is similar to the case of *In re Oetiker*, 24 USPQ2d 1443, 1446 (Fed.Cir. 1992), where the Federal Circuit indicated that it had not been shown that "a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would look to fastener for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness." Similar guidance may be found in the case of *In re Clay*, 23 USPQ2d 1767 (Fed. Cir. 1993), where the Federal Circuit held that a reference to a patent disclosing "a process for reducing the permeability of hydrocarbon-bearing formations and thus improving oil production, using a gel similar to that in the applicant's invention" was not analogous art, where the applicant disclosed and claimed "a process for storing refined liquid hydrocarbon product in a storage tank having a dead volume between the tank bottom and its outlet port."

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Here, there is absolutely no reason why an inventor, looking to provide a riser which can be adjusted in length so that the cover can be properly positioned at or above grade, would look to bury a pressure cooker or an automotive fuel tank, and then put a riser between the vessel and the cover. While it is virtually inconceivable as to why one skilled in the art of septic would look to those fields in regard to providing a riser for a septic tank, it is even more inconceivable as to why one skilled in the art would then want to adjust the length of the riser on a pressure cooker or automotive fuel tank buried in the ground by cutting a part of it off.

In addition, the hypothetical combination of the references is wholly without any teaching or suggestion as to why or how they would be combined with the septic tanks of the AKI or other references. Before attempting to combine the references, the invention as claimed in pending claims 1-4 is directed to a septic tank assembly whereby vessel includes a riser which may be attached in sealing engagement to the rim of the vessel initially, or trimmed and still be coupled in sealing engagement to the vessel. There is no motivation to modify the AKI references to provide the closure mechanisms of the '188 Wittenberg or '463 Seizert et al. references, nor any motivation to do so in any of the references. Moreover, "there must be some reason, suggestion or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination. That knowledge can not come from the applicant's invention itself." *In re Oetiker*, 24 USPQ2d at 1446. In the present case, there is absolutely no teaching or suggestion as to how or why one would take the lid of a pressure cooker or the seal of a gasoline tank and apply them to a septic tank assembly, nor any suggestion as to where or how this would be done to effect the claimed

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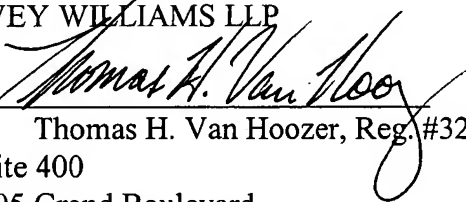
invention. Such can only have come from an impermissible hindsight reconstruction of the invention.

Accordingly, applicant respectfully submits that all of the claims now pending in this application are now in condition for allowance and such is courteously solicited. Should the examiner have any issues which may be resolved by a telephone conference, he is encouraged to contact the undersigned at 1-800-445-3460. Any additional fees necessitated by this submission or by the accompanying three month extension of time may be charged to deposit account 19-0522.

Respectfully submitted,

HOVEY WILLIAMS LLP

By

  
Thomas H. Van Hoozer, Reg. #32761

Suite 400

2405 Grand Boulevard

Kansas City, Missouri 64108

(816) 474-9050

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